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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/520,872

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Erik Gosuinus Petrus Schuijers

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

LERNER, MARTIN

ART UNIT

PAPER NUMBER

2626

MAIL DATE

DELIVERY MODE

07/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/520,872	Applicant(s) SCHUIJERS ET AL.	
	Examiner MARTIN LERNER	Art Unit 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 to 10 and 12 to 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 to 8, 12 to 13, and 16 to 18 is/are allowed.
- 6) ☒ Claim(s) 9 to 10 and 14 to 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicants are required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

The Specification, Page 15, Line 4, contains browser-executable code, directed to www.codingtechnologies.com, which should be cancelled, because any issued patent may contain a hyperlink to an inactive, or redirected, website.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 9 to 10 and 14 to 15 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Independent claims 9 and 14 represent non-statutory subject because they are drafted as means-plus-function claims, and Applicants' Specification provides an embodiment where the invention can be a signal transmitted over a data network or a signal transmitted by a broadcast service. The USPTO takes the position that any claim directed to a signal, *per se*, represents non-statutory subject matter under 35 U.S.C.

§101. Applicants' Specification, Page 14, Line 34 to Page 15, Line 1, discloses that "the invention can be embodied as a signal transmitted over a data network such as the Internet, or a signal transmitted by a broadcast service." Following the logic of means-plus-function terminology, then, the means-plus-function claims must be read in accordance with any equivalents disclosed by the Specification under 35 U.S.C. §112, 6th ¶. Thus, means-plus-function language, in combination with a disclosure of a signal embodiment, *per se*, runs afoul of the position that a signal claim is non-statutory under the policy set forth by the USPTO. Applicants can obviate the rejection simply by cancelling the sentence referring to the signal embodiment from the Specification, Page 14, Line 34 to Page 15, Line 1.

Allowable Subject Matter

4. Claims 1 to 8, 12 to 13, and 16 to 18 are allowed.
5. Claims 9 to 10 and 14 to 15 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. §101, set forth in the Office Action.

The following is a statement of reasons for the indication of allowable subject matter:

Independent claims 1, 9, and 12 to 14 are allowable because the prior art of record does not disclose or reasonably suggest the limitations of determining a relevance of a transient by looking at a difference between a first parameter from a first window that surrounds a transient location and a second parameter from a second window that surrounds the transient location, the second window being shorter than the

first window, and inserting additional parameters in the encoded signal if the difference is greater than a threshold. It is known in the prior art of audio encoding to encode audio signals with long and short windows, where a short window more efficiently encodes transients. However, the prior art of record does not disclose or reasonably suggest looking at a difference in parameters between long and short windows, and inserting additional parameters if the difference is greater than a threshold. Applicants' Specification, Page 12, Lines 19 to 28, describes a method of determining a relevance of a transient by looking at a difference between spatial parameters derived from a longer window and a shorter window surrounding the transient location, and inserting extra spatial parameters if the difference is significant. The Specification, Page 3, Lines 5 to 8, states an objective of providing an audio encoder/decoder that mitigates pre-echo artifacts related to parametric multi-channel encoding.

Response to Arguments

6. Applicants' arguments filed 02 May 2008 have been considered but are moot in view of the new grounds of rejection.

Applicants' arguments as to the nonobviousness of independent claim 1, 9, and 12 to 14 under 35 U.S.C. §103(a) are persuasive.

However, Applicants have failed to cancel the subject matter on Page 14, Line, Line 34 to Page 15, Line 1, as required by the objection to the Specification. Applicants have stated in their Remarks, "Further, it is respectfully submitted that there is no statutory requirement to delete any embodiments from the Specification."

New grounds of rejection are added herein to address the arguments put forth as to there being no statutory requirement to delete the aforesaid subject matter by Applicants. Briefly, the Specification's disclosure of an embodiment directed to a signal, *per se*, gives rise to non-statutory subject matter for any claim drafted in means-plus-function form under 35 U.S.C. §112, 6th ¶. Independent claims 9 and 14 being drafted in means-plus-function language, then, become non-statutory under 35 U.S.C. §101 through an embodiment disclosing a signal, *per se*.

It was the intention of the prior objection to the Specification to correct the disclosure of non-statutory subject matter without the necessity of a rejection under 35 U.S.C. §101. But as Applicants have effectively traversed the objection, it should be pointed out that the USPTO continues to take the position seriously, and will, if need be, provide enforcement of its position in the courts.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to Applicants' disclosure.

Chen et al., Wang et al., Oomen et al. ('760), Oomen et al. ('721), Van Der Kerkhof et al., Breebaart et al, Oomen et al. ('434), and Hilpert et al. disclose related art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARTIN LERNER whose telephone number is (571)272-7608. The examiner can normally be reached on 8:30 AM to 6:00 PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Hudspeth can be reached on (571) 272-7843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Martin Lerner/
Primary Examiner
Art Unit 2626
July 10, 2008